

## REMARKS

This Amendment is submitted in reply to the non-final Office Action mailed on January 7, 2008. No fee is due in connection with this Amendment. The Director is authorized to charge any fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112701-735 on the account statement.

Claims 1-19 are pending. Claims 1-2, 4-13 and 16-18 were previously withdrawn. In the Office Action, Claim 3 is rejected under 35 U.S.C. § 112. Claims 3, 14-15 and 19 are rejected under 35 U.S.C. § 102. In response, Claims 3, 14-15 and 19 have been amended. In view of the amendments and/or for the reasons set forth below, Applicants respectfully request that the rejections be withdrawn.

In the Office Action, Claim 3 is rejected under 35 U.S.C. § 112, second paragraph as allegedly being indefinite for failing to point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the Patent Office alleges that “a multitude of products could potentially be obtained from the process of claim 1 because the process of claim 1 states ‘comprising’ which is open language and thus allows for the inclusion of unspecified method steps.” The Patent Office further suggests that “Applicant[s] may overcome the rejection by replacing the term ‘obtainable’ with the term obtained.” See, Office Action, page 2, line 13- page 3, line 5. In response, Applicants have amended Claim 3 to recite, in part, a product obtained by a process for generating glucosamine from plants comprising the steps of drying fresh plants or plant extract to a temperature below 110 °C for less than one week. Based on at least these reasons, Applicants respectfully submit that Claim 3 fully complies with 35 U.S.C. § 112, second paragraph.

Accordingly, Applicants respectfully request that the rejection of Claim 3 under 35 U.S.C. § 112, second paragraph be reconsidered and withdrawn.

In the Office Action, Claims 3, 14 and 19 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,916,622 to Ecochard (“*Ecochard*”). Claims 14 and 19 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,420,350 to Fleischner (“*Fleischner*”). Claims 14-15 are rejected under 35 U.S.C. § 102(b) as being

anticipated by U.S. Patent No. 5,141,964 to Noel ("*Noel*"). In contrast, Applicants respectfully submit that the cited references are deficient with respect to the present claims.

Currently amended independent Claims 3, 14-15 and 19 recite, in part, products or compositions comprising glucosamine obtained by drying plant materials, wherein the glucosamine is present in the products or compositions in amounts greater than about 150 mg/kg dry matter. The amendments do not add new matter. The amendments are supported in the specification at, for example, page 23, lines 8-12. As such, the present disclosure is directed, at least in part, toward a composition containing glucosamine generated from plant materials through a drying process for the maintenance of joint health, or prevention, alleviation and/or treatment of osteoarthritis, or the improvement of the skin quality and prevention or restoration of age-related alterations of the skin. Surprisingly, Applicants have found that glucosamine can actually be formed during a controlled drying process of some raw plant materials. See, specification, page 8, lines 14-15. The drying process of the present disclosure surprisingly provides a way to increase/obtain glucosamine at high levels (*i.e.*, higher than amounts in corresponding fresh (not dried) material). It is likely that during the drying process, the glucosamine comes not from the direct degradation of macromolecules, but, rather, from a release of free fructose and amino acid, followed by the first steps of a Maillard reaction. See, specification, page 11, lines 4-22. In contrast, Applicants respectfully submit that the cited references are deficient with respect to the currently amended subject matter because the cited references fail to disclose or suggest each and every element of the present claims.

For example, *Ecochard*, *Fleischner* and *Noel* all fail to disclose or suggest products or compositions comprising glucosamine obtained by drying plant materials as required, in part, by currently amended independent Claims 3, 14-15 and 19. Further, *Ecochard*, *Fleischner* and *Noel* also all fail to disclose or suggest wherein the glucosamine is present in the products or compositions in amounts greater than about 150 mg/kg dry matter as required, in part, by currently amended independent Claims 3, 14-15 and 19. As discussed above, Applicants have found that glucosamine can actually be formed during a controlled drying process of some raw plant materials. The drying process of the present disclosure surprisingly provides a way to increase/obtain glucosamine at high levels from fresh or raw plant materials. (*i.e.*, higher than amounts in corresponding fresh (not dried) material).

In contrast, *Ecochard* is entirely directed toward the treatment of chicory powder with conditions that melt the powder so that the powder particles are agglomerated. See, *Ecochard*, Abstract. The treatment of the chicory powder is in direct contrast to the present invention that uses fresh plants to obtain increase levels of glucosamine. Applicants respectfully submit that this significant difference does not allow the conclusion that both methods will produce the same plant material with high levels of glucosamine. Because *Ecochard* fails to disclose or suggest products or compositions comprising glucosamine obtained by drying plant materials, or wherein the glucosamine is present in the products or compositions in amounts greater than about 150 mg/kg dry matter, Applicants respectfully submit that *Ecochard* fails to anticipate the present claims.

Similarly, *Fleischner* is entirely directed toward a weight loss product having supplemental compositions. See, *Fleischner*, Abstract. *Noel* is entirely directed toward a cosmetic composition comprising a cosmetic base containing an amount of a mixture of chitosan, glucosamine and at least one acid selected from the group consisting of succinic acid and gluconic acid. See, *Noel*, Abstract. However, similar to *Ecochard*, *Fleischner* and *Noel* fail to disclose each and every element of the present claims. Moreover, the Patent Office even admits that *Fleischner* and *Noel* fail to disclose each and every limitation of the present claims. See, Office Action, page 4, lines 14-15; page 5, lines 7-8.

Nevertheless, anticipation is a factual determination that “requires the presence in a single prior art disclosure of each and every element of a claimed invention.” *Lewmar Marine, Inc. v. Barient, Inc.*, 827 F.2d 744, 747 (Fed. Cir. 1987). Federal Circuit decisions have repeatedly emphasized the notion that anticipation cannot be found where less than all elements of a claimed invention are set forth in a reference. See, e.g., *Transclean Corp. v. Bridgewood Services, Inc.*, 290 F.3d 1364, 1370 (Fed. Cir. 2002). As such, a reference must clearly disclose each and every limitation of the claimed invention before anticipation may be found. Because the Patent Office even admits that at least two of the cited references fail to disclose or suggest each and every limitation, Applicants respectfully submit that the rejections under 35 U.S.C. § 102 are improper and should be withdrawn.

Accordingly, Applicants respectfully request that the rejections of Claims 3, 14-15 and 19 under 35 U.S.C. §102 be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

BELL, BOYD & LLOYD LLP

BY 

Robert M. Barrett  
Reg. No. 30,142  
Customer No. 29157  
Phone No. 312-807-4204

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